RESERVED

Civil Misc. Writ Petition no. 768 (M/S) of 2002

Hemant Kumar----- Petitioner

Versus

Judge, Family Court, Dehradun
and another Respondents

Hon'ble M.M.Ghildiyal J.

This is a petition under Article 227 of the Constitution of India challenging the order dated 17.09.2002 passed by the Principal Judge, Family Court, Dehradun.

Heard Sri V.K.Kohli learned counsel for the petitioner and Sri J.P.Joshi learned counsel for the respondent no.2.

Brief facts of the case are that on 4.12.1986 the petitioner and respondent no.2 got married and a daughter was born out of the said wedlock on 26.9.1988. On 20.3.1993 the wife left the house of the husband and started living with her parents at Rishikesh. Original suit no. 12 of 1995 was filed by the husband for dissolution of marriage. On 5.12.1997 a decree of divorce was passed. The custody of the daughter was given by the trial court to the respondent no.2-wife and the petitioner was directed to pay a sum of Rs.1500.00 per month to their daughter as maintenance till her marriage alongwith visiting rights. On 21.11.1997 the respondent no.2 filed application under section 25 of the Hindu Marriage Act for permanent alimony. In the said application prayer was made that the permanent alimony may be granted to the respondent no.2 from the date of desertion i.e. 23.2.1993. On 6.3.2000 the II Additional Civil Judge (Senior Division), Dehradun allowed the application and directed the petitioner to pay Rs. 400.00 per month as permanent alimony. Aggrieved from the order dated 6.3.2000 the respondent no .2 filed revision before the District Judge on the ground that the amount of alimony may be increased by the court. On 9.5.2001 the Additional District Judge/III Fast Track Court partly allowed the revision and modified the order dated 6.3.2000 to the extent that instead of Rs. 400.00 per month a sum of Rs. 1500.00 per month was granted to the respondent no. 2 as permanent alimony.

The wife-respondent no .2 filed execution application for payment of alimony to her with effect from 23.2.1993 to 28.2.2002 at the rate of Rs. 1500.00 per month. Another application was moved on 19.18.2002 by the wife for payment of permanent alimony for the period from 23.2.1993 to 22.7.2002 at the rate of Rs. 1500.00 per month. The petitioner filed objection against the application for execution. The Family Court, Dehradun on 17.9.2002 passed order directing the petitioner to pay permanent alimony at the rate of Rs. 1500.00 from 23.2.1993 which is impugned in the present petition.

The learned counsel for the petitioner has argued that since the respondent no.2 was granted permanent alimony at the rate of Rs. 400.00 vide order dated 6.3.2000 passed by the II Additional Civil Judge (Senior Division), Dehradun against which the respondent no. 2 filed revision and the revisional court while allowing the revision has increased the amount from Rs. 400.00 per month to Rs. 1500.00 per month but neither the learned Civil Judge (Senior Divison) nor the revisional court has passed order that the permanent alimony has been granted with effect the date of desertion and as such the petitioner is liable to pay only the permanent alimony from the date of application. He has placed reliance on the judgment of Apex Court in the case of **Food Corporation of India Vs. S.N. Nagarkar, reported in (2002)2 Supreme Court Cases 475** in which the Apex Court has held that in execution proceedings it is not permissible to go beyond the order which was passed in the writ petition. It is well settled law that the executing court cannot go beyond the decree or order passed by the court. In the present case it is not disputed that the parties were deserted with effect from 23.2.1993 and a suit for divorce was filed by the husband in the year 1994 which was ultimately decreed on 5.12.1997. It is also not disputed that application for permanent alimony was filed by the wife on 21.11.1997 with a prayer that she be granted permanent alimony from the date of desertion i.e. 23.2.1993. Learned Civil Judge (Senior Division) in the operative portion of the order though has not mentioned any date since when she was being granted permanent alimony at the rate of Rs. 400.00 per month has allowed the application in which specific prayer was that she be granted permanent alimony with effect from 23.2.1993. This order was challenged in the revision and the revisional court vide order dated 9.5.2001 modified the

order of learned Civil Judge (Senior Division) to the extent that the respondent no.2 was allowed permanent alimony by increasing the same from Rs. 400.00 per month to Rs. 1500.00. The learned Family Court while passing the order dated 17.9.2002 has not gone beyond the order passed by the learned Civil Judge (Senior Division) as well as the learned revisional court. Learned Civil Judge (Senior Division) while granting permanent alimony has not fixed any date since when the alimony is being granted and has only allowed the application and the respondent no. 2 was granted permanent alimony at the rate of Rs. 400.00 per month. In the application of the wife-respondent no. 2 prayer was specifically made that she may be allowed permanent alimony from the date of desertion. While allowing the revision the learned revisional court too has not touched the point and only increased the alimony from Rs. 400.00 per month to Rs. 1500.00 per month. In the aforesaid circumstances it cannot be said that the Family Court while passing order on 7.9.2002 has traveled beyond the order of decree passed by the learned Civil Judge (Senior Division) and the revisional court.

For the reasons stated above the writ petition is dismissed. No order as to costs.

September 1, 2003 **(M.M.Ghildiyal, J.)**
MPS